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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**M.C.C. (S) No. 34 of 2005**

Applicant : Pohari Sharan Pandey

Versus

Respodnents : The State of M.P. (Now C.G.) & another

Post for order on 24th July, 2007.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. (S) No. 34 of 2005

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| Applicant | | Pohari Sharan Pandey, aged 54 years, Ex-Constable, son of Shri Rajoallabh Pandey, resident of Baldeo Bagh Road, near Railway Bridge, Rajnandgaon, M.P. |
| | Versus | |
| Respondents | 1. | The State of M.P. ( Now C.G.) through Collector Rajnandgaon, M.P. |
| | 2. | The Superintendent of Police Rajnandgaon, M.P. |

Shri Ratan Pusty, Advocate for the petitioner.
Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents/State.

(SB: Hon'ble Justice Shri Satish K. Agnihotri, J)

**APPLICATION UNDER SECTION 22 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985 FOR REVIEW OF THE ORDER DATED 13.8.1998, PASSED IN T.A.NO. 3343 OF 1988 STATE OF M.P. VERSUS POHARI SHARAN PANDEY.**

ORDER

(Passed on 24th this day of July, 2007)

1. The present application seeks a review of the order dated 13.8.1998 passed by the Madhya Pradesh Administrative Tribunal, Jabalpur in T.A. No. 3343/1988 (State of M.P. & another Vs. Pohri Sharan).

2. The facts in nutshell are that in the year 1979 the petitioner was working as Police Constable in the office of the Sub Divisional Officer (Police), Kawardha. The petitioner was issued a charge-sheet on 11/13.8.1981 to the effect that he had submitted forged bills for claiming traveling allowance in respect of the period 6.12.1979 to 29.2.1980 and fraudulently induced the government to release the

amount against the said bills. The departmental enquiry was initiated against the petitioner and he was dismissed from service vide order dated 25.1.1982. The appeal against the order of dismissal dated 25.1.1982 was also dismissed on 28.1.2002.

3. The petitioner was prosecuted for the same charges in Criminal Case No. 257/92 under the provisions of Section 467, 471 and 420 of the Indian Penal Code. The Judicial Magistrate First Class, Rajnandgaon vide judgment and order dated 25.11.1992 (Annexure A/1) acquitted the petitioner from above stated charges on the ground that the prosecution has failed to prove the charges beyond reasonable doubts. It was further observed that the prosecution was perhaps on account of malice on the part of the Police Station Incharge Shri A. H. Khan towards the petitioner.

4. The petitioner also field Civil Suit No. 3-A/86 before the Civil Judge Class-I, Rajnandgaon, challenging the order of dismissal dated 25.1.1982. The suit was decreed vide judgment dated 17.8.1987 in favour of the petitioner on the ground that the sufficient opportunity of hearing was not afforded to the petitioner. The enquiry officer Shri G.S.Chandrol despite complaint against him, was allowed to complete the enquiry.

5. The respondent/State preferred an appeal against the judgment and decree dated 17.8.2004 in the Court of District Judge, Rajnandgaon. During the pendency of the appeal in the Court of District Judge, the Madhya Pradesh Administrative Tribunal came into existence and the said appeal stood transferred to the Tribunal and it was numbered as

T.A.No. 3343/88. The Tribunal, vide order dated 13.8.1998 (Annexure A/3) allowed the appeal and the order dated 17.8.1987, passed by the Civil Judge Class-I was quashed. Consequently, the order of the disciplinary authority terminating the service of the petitioner stood maintained.

6. The petitioner has filed this review petition on the ground that perhaps the information about acquittal of the petitioner from criminal charges, which attained finality, could not be pointed out before the Tribunal when the petitioner is protected under Regulation No. 241 of the Madhya Pradesh Police Regulations (for short 'the Regulations').

7. The petitioner has field this review application that perhaps the facts with regard to the acquittal of the petitioner in criminal case was not pointed out before the Tribunal though the judgment of acquittal in criminal case was already on record in the file when the case was heard and decided by the M. P. Administrative Tribunal.

8. Shri Ratan Pusty, learned counsel appearing for the review petitioner submits that there is error apparent on the face of record as the acquittal of the petitioner in criminal Court was not considered by the Tribunal while deciding the appeal vide order dated 13.8.1998. According to learned counsel for the petitioner, the police regulations are statutory in nature, as has been affirmed by the decisions of the Madhya Pradesh High Court, thus the petitioner is entitled to the benefit of Regulation 241 of the Regulations. He further submits that once the petitioner has been acquitted in criminal case for the same

charges, the petitioner be reinstated in service as a rule and he should not be punished departmentally when the offence for which he was tried, constituted the sole ground of punishment.

9. Smt. Anju Ahuja, learned counsel appearing for the respondents/ State would submit that the fact of acquittal in the criminal Court was already brought into the notice of the Tribunal as that formed the part of the records. The petitioner has been terminated after conducting proper departmental enquiry in 1982. Thus the acquittal in criminal case vide order dated 25.11.1992 will have no effect in the case. The petitioner belongs to a disciplined force wherein a person having such conduct is not desirable in the service. The finding of the criminal Court is on the basis that the prosecution could not establish the case against the petitioner beyond reasonable doubts.

10. Having heard learned counsel for the parties and having perused the pleadings and records appended thereto, it appears that the petitioner was found guilty in the departmental enquiry and the learned Tribunal has not considered the facts of acquittal in criminal case before coming to the conclusion that the punishment pursuant to the departmental enquiry imposed on the petitioner was proper. The Tribunal has passed the judgment and order on 13.8.1998 whereas the petitioner was exonerated in criminal case on 25.11.1992. The petitioner ought to have pointed out the facts of acquittal before the Tribunal. It appears that the petitioner has failed to produce the same before the Tribunal, though the judgment in criminal case was a part of record.

11. Regulation 241 reads as under:

> "241. Cases of acquittal.-When a police officer has been tried and acquitted by a criminal court, he must as a rule be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. If, however the acquittal, whether in the court of original jurisdiction or of appeal, was based on technical grounds, or if the facts established at the trial show that his retention in Government service is undesirable, the Superintendent may take departmental cognizance of his conduct, after obtaining the sanction of the Inspector-General.
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> 241-A. The following instructions are laid down for the guidance of the magistracy and superior courts regarding the procedure to be followed in enquiries into alleged misconduct on the part of the police acting in their official capacity."

12. The Hon'ble Supreme Court in the matter of **Union of India and another Vs. Bihari Lal Sidhana**[1] held as under :-

> "5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal

of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

13. The Hon'ble Supreme Court in the mater of **G. M. Tank Vs. State of Gujarat & another**[2] wherein the case of Union of India and another Vs. Bihari Lal Sidhana (supra) was not considered, held as under:-

"32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Through finding recorded in the domestic enquiry was not found to be valid by the Courts below, when there was an honorable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that appeal filed by the appellant deserves to be allowed."

14. In the case in hand the charge in the criminal case as well as in the departmental enquiry was one and the same. The alleged forged police rojnamcha sanha was produced before the Magistrate. Shri A. H. Khan, the then Incharge was also examined and cross examined. The Magistrate had found that the witness Shri P. R. Sao had admitted the alleged forged bills as genuine. The then S.D.O.(P) Shri G. R. Shrivastava also supported the case of the petitioner and the criminal Court found that the prosecution was lodged on account of the malice on the part of the Police Station Incharge Shri A. H. Khan towards the petitioner. In the departmental enquiry Shri P. R. Sao and Shri A. H. Khan were also examined. The then S.D.O.(P) was not examined, under whom the petitioner had actually worked, at the relevant time but other S.D.O.(P) Shri P. N. Awasthi was examined. Thus, it is found that the evidence and the documents produced before the criminal Court, as well as before the enquiry authority, were almost the same, except that some new witnesses like Shri P. N. Awasthi, S.D.O.(P), who was not S.D.O.(P) at the relevant time, were examined in the departmental enquiry. The petitioner is entitled to the benefit under Regulation 241 of the Regulations, which is statutory in nature. Regulation 241 clearly mandates that when a police officer has been tried and acquitted in a criminal Court, he must, as a rule, be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. In the case of acquittal on technical grounds, the departmental cognizance of misconduct may be taken after obtaining the sanction

of the Inspector General of Police. In the present case there was clear cut exoneration and there was no finding against the petitioner that he was undesirable in service.

15. As a result, and for the reasons mentioned herein above, the review application is allowed. The petitioner is entitled to the reinstatement in service without consequential benefits, except back wages.

16. However, with regard to the payment of back wages the same cannot be decided as no foundation has been laid with regard to the gainful employment of the petitioner elsewhere, during this period. The petitioner was terminated from service on 25.11.1982, what would be the financial implications, there is no material available for taking any decision with regard to the grant of back wages. Accordingly, the petitioner is granted liberty to make a representation before the authorities concerned, pointing out details about his gainful employment elsewhere and other relevant materials for appropriate relief. The State Authorities shall consider the representation, on its own merits, in accordance with law, within a reasonable period, after having afforded the opportunity of hearing to the petitioner. In the facts and circumstances of the case there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

(1997) 4 SCC 385[1]
(2006 AIR SCW 2709)[2]

Thakur